

# Tax Hotline

September 30, 2005

## MAINTENANCE, SERVICE OR REPAIR OF COMPUTER SOFTWARE TO ATTRACT SERVICE TAX

The Department of Revenue of the Ministry of Finance has issued a draft circular (Circular No. 354/132/2005-TRU) stating that the maintenance, service or repair of all computer software is now subject to levy of service tax under the term 'taxable service'. There was a question as to whether the maintenance and repair of computer software, which is not tangible good, would fall within the ambit of levy of service tax under this category.

The circular clarifies this, relying on the decision of the Supreme Court in Tata Consultancy Services v. State of Andhra Pradesh (Civil Appeal No. 2582 of 1998) wherein the Supreme Court has ruled that the sale of computer software falls within the scope of sale of goods. It states that the Supreme Court has categorically ruled that branded software (canned software) sold off the shelf, falls within the definition of goods.

The circular further clarifies that in the case of unbranded / customized software, the supplier develops the program and generally transfers it onto a media and thereafter, the program is delivered to the customer's premises and loaded onto his system. Thus, in this case too, the software is incorporated in a media for use and hence, such computer software on a media is goods.

Thus, in either case, the taxable service of maintenance, servicing or repair of computer software is in relation to computer software on a media, which is covered under the definition of goods and therefore subject to levy of service tax.

It is interesting to note that the decision of the Supreme Court, on which this circular is based, is only dealing with computer software which is transferred on a medium, not software which is downloaded on-line. The circular seems to have missed dealing with the maintenance and repair of such software.

-Daksha Baxi & Khushboo Baxi

Source: Economic Times - August 20, 2005

## DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

## Research Papers

### M&A In The Indian Technology Sector

February 19, 2025

### Unlocking Capital

February 11, 2025

### Fintech

January 28, 2025

## Research Articles

### Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

### INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

### Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

## Audio

### Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

### Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

### Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

## NDA Connect

Connect with us at events, conferences and seminars.

## NDA Hotline

Click here to view Hotline archives.

## Video

### Arbitration Amendment Bill 2024: A Few Suggestions | Legally Speaking With Tarun Nangia | NewsX

February 12, 2025

**What India's Transition to New Data  
Protection Law Means for Global  
Businesses**

January 23, 2025

**India 2025: The Emerging  
Powerhouse for Private Equity and  
M&A Deals**

January 16, 2025

---